

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA CANTALOUPE PROGRAM

Effective February 25, 1988
Incorporating Amendments Through December 19, 2003

CALIFORNIA CANTALOUPE PROGRAM

ARTICLE I

DEFINITIONS

Section A. DEFINITIONS OF TERMS, as used in this Program, the following terms shall have the following meanings:

1. "Act" means the California Marketing Act being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code, or as the same may be hereafter amended.
2. "Department" means the Department of Food and Agriculture of the State of California.
3. "California Cantaloupe Program", "Cantaloupe Program", or "Program" means, unless the context otherwise indicates, this marketing order which is issued by the Department pursuant to the provisions of the Act.
4. "California Cantaloupe Advisory Board", "Cantaloupe Advisory Board", and "Board" are synonymous and mean the Advisory Board created pursuant to Article II of this Program.
5. "Person" means an individual, partnership, firm, corporation, association, subsidiary, affiliate, or other business unit.
6. "Cantaloupes", for purposes of this Program, mean the fruit of the species *Cucumis melo* commonly referred to as cantaloupes, which are produced for commercial purposes within the State of California north and west of the San Geronio Pass.
7. "Standard Box" means standard fiberboard container number 44D or its equivalent as defined in section 1380.19(8) of the California Administrative Code, and such "standard box" shall be considered to have a net weight of thirty-six (36) pounds.
8. "Sell" means to offer cantaloupes for sale, expose for sale, have in possession for sale, exchange, barter, or trade.
9. "Ship" means to transport cantaloupes or cause them to be transported by any means whatsoever.
10. "Market", unless the context indicates otherwise, shall be synonymous with the phrase "to market" and shall mean to sell, ship, distribute or otherwise handle.

11. "Producer" means any person engaged within this State in the business of producing, or causing to be produced for market, cantaloupes delivered to a packer or a handler during a marketing season.

12. "Packer" means any person engaged within this state in the operation of receiving, grading, packing into an authorized container or other activity performed for the purpose of preparing cantaloupes for market or of marketing cantaloupes in fresh form during a marketing season.

13. "Distributor" means any person that engages in the operation of selling, marketing, or distributing, in intrastate commerce cantaloupes which he/she has produced or purchased or acquired from a producer or which he/she is marketing in behalf of a producer, whether as owner, agent, employee, broker, or otherwise. It does not, however, include a retailer, except a retailer that purchases or acquires from, or handles on behalf of any producer, cantaloupes which were not previously subjected to regulation by this Marketing Order.

14. "Handler" means any person engaged within this State as a distributor of cantaloupes or as a packer of cantaloupes during a marketing season, who first receives or obtains such cantaloupes from producers thereof and shall include any producer of cantaloupes who performs any of the functions of a distributor or of a packer.

15. "Fiscal Period" or "Marketing Season" means the period beginning May 1 of any year and extending through April 30 of the following year.
(Amended 4/1/91)

ARTICLE II

CANTALOUPE ADVISORY BOARD

Section A. ESTABLISHMENT, MEMBERSHIP, AND TERM OF OFFICE.

1. The Cantaloupe Advisory Board is hereby established for the purpose of carrying out activities authorized herein that pertain only to cantaloupes as described in Article I, Section A, Paragraph 6.

2. The Cantaloupe Advisory Board shall consist of ten (10) members and their alternates to assist the Department in the administration of this program within the scope of authority and responsibility of the Board as defined herein, and shall represent handlers. The Board may select one (1) additional member and alternate from the public sector.
(Amended 2/1/91)

3. Membership on the Board shall be by districts as follows:

District 1. Kern-Huron District consists of the counties of Kern, San Luis Obispo, Kings, Tulare, Inyo, and the area in Fresno County south of Mt. Whitney Road and its extensions.

District 2. Mendota-Firebaugh District consists of the counties of Monterey, San Benito, the remainder of Fresno County, Madera, and Mono.

District 3. Los Banos District consists of the counties of Santa Cruz, Santa Clara, Merced, Mariposa.

District 4. Northern California District consists of the counties of San Mateo, Alameda, Stanislaus, Tuolumne and all counties to the north thereof. (Amendment 2/1/91)

4. District 1 will be represented by two (2) members, District 2 will be represented by four (4) members, Districts 3 and 4 will be represented by one (1) member each, and there will be two (2) members at-large that will be selected without regard to districts. Each member shall also be provided with an alternate member from each district. In the event of changes in areas of production, the Board may recommend to the Department approval of changes in district boundaries or changes in the number of members and alternate members from each district. Any such reapportionment shall be deemed a minor amendment to this Program. (Amended 12/19/2003)

5. The term of office of Board members and their respective alternates shall be for three (3) years beginning April 1 and continuing at the pleasure of the Department through March 31 of the third following year or until their successors have been appointed and have qualified; except that the term of office beginning December 1, 1989 shall continue through March 31 of 1992. (Amended 4/1/91 & 2/1/96)

Section B. NOMINATION OF MEMBERS OF CANTALOUPE ADVISORY BOARD.

1. Nominations for the initial Cantaloupe Advisory Board shall be made at the public hearing held for the purpose of formulating this Program.

2. For the purpose of obtaining nominations to subsequent Boards, the Department shall cause to be held a meeting or meetings of handlers for each district in California described in Subsection 3, Section A of this Article. Such nomination meetings shall be held not later than March 1. (Amended 4/1/91.)

3. Insofar as practicable, handlers shall nominate not less than three (3) persons eligible to serve as a member of the Board for each member position available.

4. The Board may recommend nomination procedures applicable to Boards subsequent to the initial Board.

Section C. SELECTION AND APPOINTMENT OF MEMBERS OF BOARD.

In appointing the members and alternates of the Board, the Department shall select nine (9) members and nine (9) alternate members from the nominees selected by handlers. Such appointments shall be consistent with the provisions of Sections A and B hereof.

Section D. FAILURE TO NOMINATE.

In the event nominations are not made pursuant to Sections A and B of Article II and within the time specified therein, the Department may select members and alternate members, without regard to nominations, from the individuals who are or who represent members of groups entitled to submit nominations as described in said Section A of Article II.

Section E. QUALIFICATION.

Any person appointed by the Department as a member or as an alternate for a member of the Board shall qualify by filing with the Department a written acceptance and such other documents as may be required.

Section F. ALTERNATE MEMBERS.

An alternate member of the Board shall, in the absence of the member for whom he/she is alternate, sit in the place and stead of such member at any meeting of the Board and shall have all the powers, duties, and privileges of the member while attending any such meetings. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act in his/her place and stead until a successor to such member is selected and has qualified.

Section G. VACANCIES AND DISQUALIFICATION.

1. The Department shall fill any vacancy occasioned by the removal, death, resignation, or disqualification of any member or alternate member of the Board. In making such appointments the Department may take into consideration any nominations made by the remaining members of the Board.

2. Any member or alternate who ceases handling cantaloupes in the district from which he/she was selected or who ceases to be directly associated with cantaloupe handling shall be disqualified and his/her position shall be deemed vacant at the next succeeding meeting of the Board following such member's or alternate's disqualification.

Section H. ORGANIZATION.

1. The Board shall select a Chairman, Vice Chairman, and other necessary officers and may adopt such rules for the conduct of its meetings as it may deem advisable.

2. The Board shall not perform any of its duties nor exercise any of the powers herein granted when more than three (3) vacancies exist in the membership which are not covered by alternates.

3. Five (5) of the members of the Board, or alternates eligible to vote, shall constitute a quorum. Unless specified otherwise, any recommendation shall require concurrence of at least five (5) eligible voters present. Should the Board expand to ten (10) members, six (6) eligible voters shall constitute a quorum.

Section I. COMMITTEES

The Board may recommend, and the Department may appoint a grade and quality standards committee. This committee shall consist of producers of cantaloupes. The Board may also recommend, and the Department may appoint, such other committees as may be deemed necessary to assist the Board and Department in performing duties authorized pursuant to this Program.

Section J. EXPENSES

The members of the Board and any committees provided for herein may be reimbursed for allowable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder, but in compliance with the Act, no such member shall receive a salary in the performance of such duties.

Section K. DUTIES AND POWERS OF THE BOARD.

The Board shall have the following duties and powers, which may be exercised subject to the approval of the Department:

1. To administer the provisions of the Program.
2. To receive and report to the Department complaints of violations of this program.
3. To recommend to the Department amendments to this Program.

4. To assist the Department in the assessment of members of the industry and in the collection of such assessments to cover expenses incurred by the Board and the Department in the administration of this Program.

5. To assist the Department in the collection of such necessary data as the Department or the Board may deem necessary to the proper administration of the Program and of the Act.

6. To keep minutes, books and records which will clearly reflect all its meetings, acts, and transactions and to provide the Department with copies of minutes duly certified by an authorized officer of the Board. Said minutes, books, and records shall at all times be subject to examination by the Department or its duly authorized representatives.

7. To employ such personnel as may be deemed necessary and to fix their compensation and terms of employment.

8. To receive, invest, and disburse funds pursuant to the provisions of Article 10 of the Act.

Section L. LIMITATION OF LIABILITY OF MEMBERS OF THE CANTALOUPE ADVISORY BOARD.

The members of the Board or any committees hereunder duly appointed by the Department shall not be held responsible individually in any way whatsoever to any handler or any other person for errors in judgment, mistakes or other acts, either or commission or omission, as principal, agent, or person, except for their own individual acts of dishonesty or crime. No such person shall be held responsible individually for any act or omission of any other member of the Board or its committees. The liability of the Board or its committees, shall be several and not joint and no member shall be liable for the default of any other member.

A R T I C L E I I I

Q U A L I T Y S T A N D A R D S A N D G R A D E R E G U L A T I O N S

Section A. RECOMMENDATIONS OF GRADE AND QUALITY STANDARDS.

In carrying out the provisions of this Marketing Order, and to facilitate the enforcement and administration thereof, the Board may recommend, and the Department may approve such grade and quality standards of cantaloupes as necessary. Such recommendations shall not be lower than any existing state or federal regulations.

Section B. INSPECTION AND CERTIFICATION.

During any period or periods which grade standards are in effect, all cantaloupes shall be inspected and certified by an authorized inspection agency in accordance with inspection rules and regulations as the Board may recommend and the Department may issue.

Section C. INSPECTION AGENCY.

The Board is authorized to make suitable arrangements for inspection and certification by an established and experienced inspection agency or the Board, with the approval of the Department, may employ its own inspectors. In the event the Board employs its own inspectors, such inspectors shall first be qualified by the Department of Food and Agriculture as being competent to perform such inspection service.

Section D. SEASONAL AND ADMINISTRATIVE RULES AND REGULATIONS.

Seasonal and Administrative Rules and Regulations, as necessary to carry this Article into effect, shall be recommended by the Board and approved by the Department in any season when grade regulations and inspection procedures are made effective by the Department pursuant to this Marketing Order.

A R T I C L E V

SALES PROMOTION, MARKET DEVELOPMENT, AND MARKET RESEARCH

Section A. SALES PROMOTION AND MARKET DEVELOPMENT PROGRAM.

1. The Board is hereby authorized to prepare plans and administer programs and expend moneys, subject to the approval of the Department, for promoting the sale of cantaloupes, as defined in this Order, for the purpose of maintaining existing markets or creating new and larger markets for cantaloupes; provided, that any such plans so developed and conducted shall be directed toward promoting the sale of cantaloupes without reference to a particular private brand name or trade name; and, provided, further, that such plans or programs make no false or unwarranted claims on behalf of cantaloupes, nor disparage the quality, value, sale or use of any other agricultural commodity.

2. In carrying out any sales promotion or market development programs or other activities authorized in this Article, the Board, subject to the approval of the Department, may undertake any activities consistent with the Act and this Program, which the Board and the Department determine to be appropriate.

3. In addition to the foregoing and as part of its sales promotion and market development authorization, the Board may present facts to, and negotiate with state, federal, or foreign governmental agencies on matters which affect the marketing of cantaloupes produced within the State of California.

4. The Board may recommend and the Department may approve provisions for the establishment of, regulations for, and rules for permissive use of an official board brand, trade name, or label, or other distinctive designation of grade, quality or condition as provided for in the Act.

5. In order to carry out programs or activities authorized in this Article, the Board, subject to the approval of the Department, may enter into contracts with any person qualified to render services in formulating and conducting said plans or programs, and prepare a statement of the cost of such plans and programs.

Section B. MARKET RESEARCH.

The Board may investigate or cause to be investigated economic and marketing conditions affecting cantaloupes. Such investigation may include as many of the following as practicable and applicable: (a) the supply of cantaloupes of various grades and sizes available or about to become available in the producing area; (b) the present and prospective market demands for various grades and sizes of such cantaloupes; (c) the present and prospective market prices for various grades and sizes of such cantaloupes; (d) the present and prospective consumer demand for various grades and sizes of such cantaloupes; (e) other pertinent economic and marketing factors, including pack and container preferences, affecting the marketing of cantaloupes or of different grades and sizes thereof. Upon completion of such investigation, the Board may prepare a report of its findings setting forth the facts with respect to economic and marketing conditions affecting the marketing of cantaloupes. These findings may be used to substantiate the need for quality standards as provided in Article III.

Section C. APPROVAL BY THE DEPARTMENT.

Upon recommendation by the Board of any sales promotion or market development programs or activities authorized by this Article, and upon recommendation of the expenditures required by such programs, the Department may approve such programs and may authorize the Board to incur expenditures in connection therewith.

ARTICLE V

WEATHER DATA

Section A. WEATHER DATA AUTHORIZATION.

The Cantaloupe Advisory Board, subject to the approval of the Department, is hereby authorized to gather and disseminate, or cause to be gathered and disseminated, weather data to cantaloupe producers and handlers, and to any persons providing services relating to the production of cantaloupes when the data is necessary in any manner in the production or harvesting of cantaloupes.

ARTICLE VI

BUDGETS AND RATES OF ASSESSMENT

Section A. RECOMMENDATION OF BUDGETS AND RATES OF ASSESSMENT BY THE CANTALOUPE ADVISORY BOARD.

At the beginning of each fiscal year and as may be necessary thereafter, during which time this Program is in active operation, the Cantaloupe Advisory Board shall recommend to the Department a budget of estimated income and expenditures and reserves for the administration of and support of any activities authorized under this Program. The Board shall also recommend a rate or rates of assessment calculated to provide adequate funds to defray the proposed expenditures as set forth in its budget. Said assessments shall not exceed five cents (\$0.05) per 36 lb. carton or equivalent thereof to be paid by handlers.

Section B. APPROVAL OF BUDGETS AND FIXING OF RATES OF ASSESSMENT THE DEPARTMENT.

If the Department finds that the recommended budgets and rates of assessment are proper and equitable and calculated to provide such funds as may be necessary to properly carry out the provisions of this Program, it may approve such budgets and rates; provided, however, that in no event shall such rates of assessment exceed the maximum rates authorized by the Act.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS.

The obligation to pay assessments under this Program shall apply to each handler for all cantaloupes marketed by said handler. To facilitate collection, each handler of cantaloupes shall pay the applicable assessment on all cantaloupes received by him from a producer at the rates approved by the Department pursuant to the provisions of this Program. The Department shall verify that proper payment has been made by handlers. Any assessments levied hereunder shall constitute a personal debt of every person so assessed and shall be due and payable to the Department, or the Cantaloupe Advisory Board as prescribed by the Department, upon demand. In any event of failure by any person to pay any assessment payable hereunder, the Department may file a complaint against such person in a state court of competent jurisdiction for the collection thereof pursuant to the provisions Section 58929 of the Act. The Department may add to any unpaid assessment a collection expense penalty not to exceed ten percent (10%) of such unpaid assessment.

A R T I C L E V I I

RULES AND REGULATIONS

Section A. SEASONAL MARKETING REGULATIONS.

Upon recommendation by the Board, the Department may, in accordance with the provisions of the Act, issue and make effective such seasonal marketing regulations as may be necessary to carry out the purposes and attain the objectives of the marketing order and of the Act. Notice of any such seasonal marketing regulations shall be given to all handlers directly affected in the manner and within the time required as specified in the applicable sections of this marketing order or as specified in any administrative rules and regulations made effective under this marketing order.

Section B. ADMINISTRATIVE RULES AND REGULATIONS.

Upon recommendation by the Board, and in accordance with the provisions in Section D, Article III, the Department may, in accordance with the provisions of the Act, establish such administrative rules and regulations as may be necessary to carry out the purposes and attain the objectives of the Marketing Order and of the Act. The provisions of Article 16 (commencing with Section 59111) of the Act relative to posting and mailing of notice and time of taking effect shall be applicable to any administrative rules and regulations established pursuant to this Article.

ARTICLE VIII
BOOKS AND RECORDS

Section A. BOOKS AND RECORDS.

Any and all persons subject to the provisions of this Program shall maintain books and records reflecting their operations under this Program and shall furnish to the Department or its duly authorized or designated representative, such information as may be, from time to time, requested by them relating to the operations under this Program and shall permit the inspection by said Department, or its duly authorized or designated representative, of such portion of their books and records as relate to operations under said Program.

Section B. CONFIDENTIAL INFORMATION.

Any information obtained by any person pursuant to the provisions of this Article shall be confidential and shall not be by him disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the Department or the Cantaloupe Advisory Board to give legal advice thereupon or by court order.

Section C. IMMUNITY.

No person shall be excused from attending and testifying or from producing documentary evidence before the Department in obedience to the subpoena of the Department on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he/she may be so required to testify, or produce evidence, documentary or otherwise, before the Department in obedience to a subpoena issued by the Department.

ARTICLE IX
APPEALS

Section A. APPEALS.

Any person affected by this Program may petition the Department to review any order or decision of the Board or any of its subcommittees. Any such petition must be filed in writing setting forth the facts upon which it is based.

Section B. EFFECT OF APPEAL.

Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the order or decision of said Board, unless the Department shall rule otherwise. The Department shall, if the facts stated show reasonable grounds, grant any order or decision upon which an appeal is taken.

A R T I C L E X

AGENTS

Section A. AGENTS.

The Department may, by designation in writing, name any person or persons, including officers or employees of the California Department of Food and Agriculture, to act as its agent or agents, with respect to any provision of this Program.

A R T I C L E XI

RELATION TO OTHER LEGISLATION

Section A. ANTI-TRUST LAWS.

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Practices Act, the Fair Trade Act (sections 16700 et. seq. of the Business and Professions Code), or any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Program and in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceeding.

A R T I C L E XII

SEPARABILITY

Section A. SEPARABILITY.

If any section, sentence, clause, or part of this Program is for any reason held to be invalid or unconstitutional, or the applicability thereof to any person, circumstance, or thing is held to be invalid or unconstitutional, such decision shall not affect the remaining portions of this program. The Department and the participants in the referendum and assent procedures to this Program

hereby declare that it would have issued this Program and each sentence, section, clause, or part thereof, despite the fact that one or more sections, sentences, clauses, or parts thereof be declared invalid or unconstitutional.

ARTICLE XIII

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME.

This Program shall become effective on the date specified by the Department and shall continue in effect until suspended or terminated by the Department, or by operation of law in accordance with the provisions of the Act. In accordance with Section 59086 of the Act, the Department shall, at least once every five (5) years, hold a public hearing to determine whether the Program is effectuating the purposes and provisions of the Act.

Section B. TERMINATION.

Pursuant to the provisions of Section 59081 of the Agricultural Code, the Department shall suspend or terminate this Program, or any provision thereof, whenever it finds, after a public hearing duly noticed and held in accordance with the provisions of Article 6 of Chapter 1, Division 21 of said Agricultural Code, that this Program, or any provisions thereof, is contrary to or does not tend to effectuate the declared purposes of provisions of the Act within the standards and subject to the limitations and restrictions therein imposed; provided, that such suspension or termination shall not become effective until expiration of the then current marketing season. The Department shall also suspend the provisions or terminate this Program in accordance with the provisions of Sections 59082, 59084, or 59085 of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION, OR AMENDMENT.

Unless otherwise expressly provided for in the notice of amendment, suspension, or termination, no amendment, suspension, or termination of the Program issued by the Department shall either (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any other provisions of said Program, not so amended, suspended, or terminated; (b) release, condone, or dismiss any violation of said Program occurring prior to the effective time of such amendment, suspension, or termination; (c) affect or impair any right or remedy of the Department or of any person with respect to any such violation; or (d) affect any liabilities pursuant to the provision of this Program.